

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 863 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

MAJID ALIAS MAJLO MAMAD

KASMANI

Versus

STATE OF GUJARAT

Appearance:

MR NIRAV C THAKKAR for Petitioner

MR DP JOSHI, APP, for Respondents

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 02/12/1999

ORAL JUDGEMENT

1. The petitioner challenges the order of externment passed by Sub Divisional Magistrate, Jamnagar on April 30, 1999 in exercise of powers u/s 57 of the Bombay Police Act.

2. The externing authority had earlier issued notice to the proposed externee / petitioner as required u/s 59 of the Bombay Police Act and thereafter, the externment

order was passed.

3. While passing the externment order, the externing authority took into consideration the fact that the externee has been booked for a number of offences under Bombay Prevention of Gambling Act, 1987 [hereinafter referred to as 'the Gambling Act', for short]. That he was a habitual gambler and was used to behaving in a high-handed manner for pursuing his such activities. The externing authority observed that the seven offences are registered against the petitioner which are punishable u/s 12 of the Gambling Act. The authority ultimately observed that the petitioner was convicted in four offences u/s 12-A by a competent court and was fined Rs.250/- and was imprisoned till rising of the court and ultimately, came to a conclusion that externment is necessary for preventing the petitioner from pursuing his illegal and anti social activities.

4. The said order was carried in appeal before the Government which ultimately came to be dismissed by order dated June 25, 1999.

5. The petitioner is before this Court with this petition under Article 226 of the Constitution of India challenging the order of externment and the order passed in appeal. The major grounds raised in the petition are as under :

"That the convictions relied upon by the Sub Divisional Magistrate while passing the impugned externment order are convictions under section 12 of the Bombay Prevention of Gambling Act. The petitioner says and submits that section 57 of the Bombay Police Act provides that when there are three or more convictions u/s 4 of section 12A of the Bombay Prevention of Gambling Act, then only order of externment can be passed u/s 57 of the Bombay Police Act.

The petitioner submits that the petitioner has been convicted four times in the past on confession of guilt in the following C.R. Nos. namely, [i] C.R. No. 353/97, [ii] C.R. No.380/97, [iii] C.R. No.92/98 and [iv] C.R. No.94/98. The petitioner submits in the offences at serial numbers [i], [ii] and [iv], the petitioner has been convicted u/s 12 of the Bombay Prevention of Gambling Act, whereas in the offence at serial number [iii], the petitioner has been convicted u/s 12A of the Bombay

Prevention of Gambling Act.

The petitioner therefore says and submits

that the Sub Divisional Magistrate does not have jurisdiction to pass externment order under section 57 of the Bombay Police Act. "

6. Mr.N.C.Thakkar, learned advocate appearing for the petitioner has restricted his argument only to the above grounds. He produced today on record the copies of the orders passed by the competent court in the gambling cases against the petitioner.

7. Mr. Thakkar submitted that the externing authority could not have passed orders of externment u/s 57 as the convictions on which the externing authority has placed reliance are u/s 12 and not u/s 12-A of the Gambling Act. This reflects non-application of mind on part of the externing authority and the order is, therefore, bad and may be quashed.

8. Mr. Joshi, learned APP has opposed this petition. He submitted that the petitioner was involved in gambling activities which is a menace to the society and the petition therefore may be dismissed.

9. On going through the copies of the judgement and order produced by Mr.Thakkar on record, it is clear that the petitioner came to be convicted on his plea of guilt for offence u/s 12 of the Gambling Act and the learned Magistrate also passed the order of conviction for offence punishable u/s 12 of the Gambling Act on the basis of the plea of guilt. The observation of the externing authority therefore that the petitioner came to be convicted u/s 12-A of the Gambling Act in four offences is not correct and it reflects non-application of mind. The order therefore would stand vitiated deserving quashing of the order. Mr. Joshi has also taken a look at the papers and had no answer to this legal situation.

10. In view of this situation, the petition deserves to be allowed and the same is allowed accordingly. The impugned order of externment dated 30/4/1999 passed by the Sub Divisional Magistrate, Jamnagar and the order of the appellate authority are quashed. The externee - Majid alias Majlo Mamad Kasmani, is hereby ordered to be set at liberty forthwith, if he is not required in any other case. Rule is made absolute with no orders as to costs.

[A.L.DAVE, J.]

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